

REMARKS

Claims 68-72 and 74-77 were pending in the application. By this amendment, claims 68, 69, and 74 have been amended, and new claims 78-80 have been added.

The following remarks are in response to the grounds for rejection of claims set forth in the Office Action.

I. Claims Rejected Under 35 U.S.C. § 102

A. Broome

Claims 68 and 74-77 were rejected as being anticipated by Broome et al. (USP 6,152,946). In response, Applicants have amended independent claims 68 and 74 to distinguish over the Broome patent.

In particular, each of claims 68 and 74 has been amended to recite an anchor in which the recited fastener has "a first state in which said suture is translatable through said fastener, and a second state in which said suture is restrained from translation through said fastener." Support for this amendment is provided in the specification at, for example, paragraph 0060 and at FIG. 6.

The Broome patent does not describe anchors, but instead describes a filter device used to collect loosened or floating debris in a body lumen, such as embolic material dislodged during atherectomy or thrombectomy. (Col. 3, ll. 40-44). The filter device 20 includes a plurality of longitudinally-extending ribs 30 coupled to a collar 33. (Col. 3, ll. 52-62; Figs. 1, 2, 5, and 6). The collar 33, in turn, is coupled to a guidewire 32. (Col. 3, ll. 52-62). Importantly, the collar 33 is at all times slidable on the guidewire 32. (Col. 3, ll. 52-62; col. 4, ll. 62-66; col. 5, ll. 42-45). The slidable relationship between the collar 33 and the guidewire 32 is necessary in order to deploy and retrieve the embolic filter.

In the Office Action, the Broome collar 33 and guidewire 32 were identified with Applicant's recited "fastener" and "suture," respectively. As noted above, however, the Broome collar 33 does not have a first state in which the guidewire 32 is translatable through the collar 33 and "a second state in which said [guidewire] is restrained from translation through" the collar 33, as recited in amended claims 68 and 74. As a result,

there can be no anticipation of those claims by the Broome patent, nor can there be any anticipation of claims 75-77, which depend from claim 74.

Moreover, there would be no reason why a person of skill in the art would have considered it obvious to modify the Broome device such that the collar 33 would have the "second state" recited in the amended claims. Such a modification would have the effect of changing the principle of operation of the Broome filter device, and would be contrary to the teaching of the Broome patent.

For the foregoing reasons, Applicant requests withdrawal of the rejections of claims 68 and 74-77.

B. Lock

Claims 69-71 were rejected as being anticipated by Lock et al. (USP 5,709,707). In response, Applicants have amended independent claim 69 to distinguish over the Lock patent.

In particular, claim 69 has been amended to recite an anchor for use in surgery that includes "a fastener coupled to the suture and configured to retain a tension force on the suture, the fastener having a first state in which the suture is translatable through the fastener, and a second state in which the suture is restrained from translation through the fastener." Support for this amendment is provided in the specification at, for example, paragraph 0060 and at FIG. 6.

The Lock patent does not describe anchors for use in surgery, but instead describes a septal closure device. (Col. 3, ll. 29-31). The closure device 10 includes a proximal occluder 12 and a distal occluder 14. (Col. 4, ll. 15-20). Importantly, the Lock device does not include a feature that corresponds with Applicant's recited "fastener coupled to a suture," nor that the fastener has "a first state" and "a second state" as recited. As a result, there can be no anticipation of claim 69 by the Lock patent, nor can there be any anticipation of claims 70-71, which depend from claim 69.

Moreover, there would be no reason why a person of skill in the art would have considered it obvious to modify the Lock device by providing a "fastener" having "a first state" and "a second state" as recited in the amended claims. Such a modification would

have the effect of changing the principle of operation of the Lock septal closure device, and would be contrary to the teaching of the Lock patent.

For the foregoing reasons, Applicant requests withdrawal of the rejections of claims 69-71.

II. Claim Rejected Under 35 U.S.C. § 103

Claim 72 was rejected as being unpatentable for obviousness over the Lock patent. Claim 72 depends from claim 69, which, as discussed above, is patentable over the Lock patent.

Accordingly, Applicant requests withdrawal of the Examiner's rejection of claim 72 for the same reasons set forth above in relation to claim 69.

III. New Claims 78-80

New claims 78-80 generally track amended claims 74, 75, and 77, with the revisions of the recitation of: (1) a strut "comprising a loop," and (2) that the fixture point is "located at or near a center of" the membrane. Support for these recitations is found in the specification at, for example, paragraphs 0076-80 and FIGS. 12A-C.

Claim 78 also recites a fastener "translatable coupled to the suture and configured to retain a tension force on the suture, the fastener having a first state in which the suture is translatable through the fastener, and a second state in which the suture is restrained from translation through the fastener." These features generally track those discussed above in relation to claims 68, 69, and 74. For the reasons set forth above, Applicant submits that new claims 78-80 contain patentable subject matter.

Amendment and/or cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. Similarly, unless explicitly stated, nothing contained or not contained in this paper should be construed as an assent to any of the Examiner's stated grounds for rejecting the claims, including specifically the Examiner's characterization of the teachings of the cited art and the Examiner's contentions that any combinations of cited art would have been obvious.

Application No.: 10/612,170
Examiner: Mendoza, Michael G.

Attorney Docket No.: USGINZ02111

Rather, the present amendments to the claims and Remarks are an attempt to expedite allowance and issuance of the currently pending claims. No new matter has been added.

Application No.: 10/612,170
Examiner: Mendoza, Michael G.

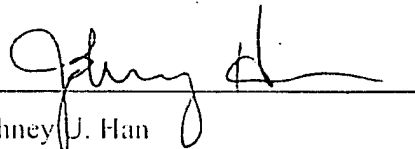
Attorney Docket No.: USGINZ02111

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. USGINZ02111. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



Johny J. Han
Registration No. 45,565

Charles C. Fowler
Registration No. 39,675

Customer No. 40518
Levine Bagade Han LLP
2483 East Bayshore Road, Suite 100
Palo Alto, CA 94303
Direct: (650) 242-4217
Fax: (650) 284-2180